Mohinder Singh

Vs

State (Delhi Administration)

Criminal Appeal No. 67 of 1977

(Ranganath Misra, A. N. Sen JJ)

24.09.1985

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by special leave is directed against the judgment of the Delhi High Court. The appellant along with others was put on trial for offences punishable under Section 302/34 and Section 449/34, IPC for having assaulted one Ranjit Singh who succumbed to the injuries. The learned trial Judge convicted the appellant under section 302, IPC and sentenced him to imprisonment for life while the co-accused were convicted for minor offences and sentenced to different terms of imprisonment. The appellant was also convicted for the offence under Section 499, IPC and sentenced to 2 years' rigorous imprisonment. On appeal the High Court while upholding the guilt of the appellant modified the conviction to one under Section 304, Part II, IPC and sentenced him to rigorous imprisonment of 10 year' and to pay a fine of Rs. 2000 with a default sentence of 1.5 years' rigorous imprisonment. The High Court upheld the conviction and sentence for that offence under Section 449, IPC. The modified judgment of the Delhi High Court is assailed in this appeal.

2. The parties are close relations. One Mela Singh had two sons - Kirpal Singh and Ranjit Singh. The two brothers lied in adjacent houses in Chuna Mandi area of Delhi, and dispute existed between them in regard to division of property. Appellant Mohinder Singh is Kirpal Singh's son. The deceased was Ranjit Singh his uncle. The principal witnesses examined on the side of the prosecution are Shakuntala, PW 1, daughter of Ranjit Singh, her husband Gurbachan Singh, PW 2, and Harpal, son of Ranjit, PW 3.

3. PW 1, the informant alleged that on August 28, 1972, she had come to the house of her father. She found that the accused persons who are Kirpal (now dead), appellant and other relations, came up to the roof of the kitchen and hurled abuses at Ranjit. They also threw brickbats at them and ultimately came into the residential portion of Ranjit Singh armed and started assaulting Ranjit, PW 1 and also PW 3. It was Shakuntala's case that the appellant came armed with an iron rod and with it gave blows on Ranjit's face and nose. When the son and the daughter intervened to protect their father they were also beaten up. Medical evidence showed that no iron rod was used and the blows on Ranjit were by lathi. According to the post-mortem report internal injury corresponding to the injury on the forehead was the fatal blow. Medical examination of the deceased had not, however, indicated any external injury on the forehead, and the evidence given by the prosecution did not clearly indicate a blow on the forehead. In unfolding the prosecution case there was considerable discrepancy between the statements given to the police under Section 161 of the Code of Criminal Procedure and the evidence at the trial. The Courts below, however, accepted the explanation

offered by the prosecution in regard to the shortcomings and accepted the prosecution case that the appellant had as a fact given the main blow to the deceased which caused his death.

4. The appellant who personally argued his appeal reiterated the contentions which had been raised in the Courts below. According to him the prosecution case should have been rejected outright in view of two different stories having been placed - one during investigation and the other at the trial. According to him he was not at the spot at all and in the evening of the date of occurrence the members of the family of the deceased had got drunk within their house and there was some incident.

5. We have given a patient hearing to the appellant and we have also heard Mr. Mahajan for the Delhi Administration. It is true that there is considerable discrepancy and embellishment in regard to the instrument of assault. Similarly, the evidence in regard to the part of the body of Ranjit on which assault was made is discrepant but having read the judgment of the two courts below and after hearing the appellant and counsel for the respondent, we are not in a position to accept the plea of alibi raised by the appellant. We are also impressed by the argument advanced by Mr. Mahajan that the witnesses had spoken about the blow being on the face and the nose and the medical evidence has found it to be on the forehead. It was admittedly night time and it is quite possible that the witnesses had not been able to see accurately as to which part of the body was hit. After all the distance between nose and the face and the forehead is indeed negligible and looking at it one way, the forehead may be part of the face. The explanation accepted by the High Court in regard to the instrument of assault is also a plausible one and we may not be justified in taking a different view. We, therefore, confirm the finding that as a result of assault as alleged by the prosecution Ranjit received injuries to which he ultimately succumbed.

6. The question then for consideration is what offence has the appellant committed. The trial court had found him guilty of murder while the High Court changed the conviction from one under Section 302 to Section 304, Part II, IPC on a finding that it was not a case of murder. The evidence as given in the case is indeed of a general type and it is difficult to correlate the blow of Mohinder Singh with the internal injury which according to medical evidence led to death. Mr. Mahajan fairly conceded that if this be the position, the appropriate section under which the appellant or for the matter of that others, should have been convicted, is section 325/34, IPC. In view of the fact that the other accused persons have not been convicted under Section 325, IPC and there has been no further appeal by the Delhi Administration, the question of convicting others under Section 325, IPC does not arise. But we are of the view that the appellant should appropriately be convicted under Section 325, IPC. We accordingly set aside the conviction under Section 304, Part II, IPC as given by the High Court and in lieu thereof we convict the appellant under Section 325, IPC.

7. Coming to the question of sentence, the appellant appears to have already undergone 3.5 years of imprisonment both as an under-trial prisoner and as a convict in the hands of the trial court as also during the pendency of the appeal. In the bail application made to this Court it has been asserted that he had undergone imprisonment of more than three years by September 1976 and he was admitted to bail by order of this Court dated February 14, 1977. Thus he appears to have already suffered a sentence of imprisonment of almost four years. In the facts of the case, we are satisfied that the sentence already undergone is adequate punishment. We accordingly alter his conviction from section 304, Part II, IPC to Section 325, IPC and direct that for the said offence the punishment of about 4 years' rigorous imprisonment which he has already undergone is adequate. We are told that the appellant after being enlarged on bail by this Court has set up a typing institute and has settled himself in life. No useful purpose would be served in sending him back to jail at this belated stage.

This has weighed with us as a consideration for confining his sentence to the period undergone.

8. So far as the conviction under Section 449, IPC is concerned, there was admittedly house trespass and the conviction, therefore, is fully justified. The sentence awarded to him was made concurrent with the sentence for the other offence. In view of the order which we propose to pass, this aspect does not require further examination.

9. Subject to alterations indicated above both in regard to conviction and on the question of sentence, the appeal is dismissed.

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